

this section does not attempt to precisely define the "interested persons" whose consent is required to obtain a binding settlement as provided in subsection (a). However, the consent of the trustee would ordinarily be required to

obtain a binding settlement with respect to matters involving a trustee's administration, such as approval of a trustee's report or resignation.

NORTH CAROLINA COMMENT

Subsection (b) makes significant changes in this section of the Uniform Trust Code. Whereas the Uniform Trust Code allows interested persons to enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust, subsection (b) restricts the matters that may be resolved by a nonjudicial settlement agreement to the exclusive list set forth in subsection (b). Some of these matters appeared in the nonexclusive list in subsection (d) of the Uniform Trust Code which was omitted.

The drafters intended by this modification to allow interested persons to nonjudicially resolve only administrative matters relating to

the trust and not substantive issues such as the construction of the terms of the trust, a modification of the terms of the trust or a termination of the trust. The drafters were concerned that allowing nonjudicial settlement of substantive issues may provide a basis for inappropriate changes in the terms of the trust or for termination of the trust contrary to the settlor's intent and the requirements otherwise imposed by statute. The modification of this section of the Uniform Trust Code was not intended to prevent parties from entering into binding settlement agreements as permitted under North Carolina law prior to the enactment of this Chapter.

§ 36C-1-112. Rules of construction.

The rules of construction that apply in this State to the interpretation of and disposition of property by will also apply as appropriate to the interpretation of the terms of a trust and the disposition of the trust property.

History.

2005-192, s. 2.

OFFICIAL COMMENT

This section is patterned after Restatement (Third) of Trusts § 25(2) and comment e (Tentative Draft No. 1, approved 1996), although this section, unlike the Restatement, also applies to irrevocable trusts. The revocable trust is used primarily as a will substitute, with its key provision being the determination of the persons to receive the trust property upon the settlor's death. Given this functional equivalence between the revocable trust and a will, the rules for interpreting the disposition of property at death should be the same whether the individual has chosen a will or revocable trust as the individual's primary estate planning instrument. Over the years, the legislatures of the States and the courts have developed a series of rules of construction reflecting the legislative or judicial understanding of how the average testator would wish to dispose of property in cases where the will is silent or insufficiently clear. Few legislatures have yet to extend these rules of construction to revocable trusts, and even fewer to irrevocable trusts, although a number of courts have done so as a

matter of judicial construction. See Restatement (Third) of Trusts § 25, Reporter's Notes to cmt. d and e (Tentative Draft No. 1, approved 1996).

Because of the wide variation among the States on the rules of construction applicable to wills, this Code does not attempt to prescribe the exact rules to be applied to trusts but instead adopts the philosophy of the Restatement that the rules applicable to trusts ought to be the same, whatever those rules might be.

Rules of construction are not the same as constructional preferences. A constructional preference is general in nature, providing general guidance for resolving a wide variety of ambiguities. An example is a preference for a construction that results in a complete disposition and avoid illegality. Rules of construction, on the other hand, are specific in nature, providing guidance for resolving specific situations or construing specific terms. Unlike a constructional preference, a rule of construction, when applicable, can lead to only one result. See Restatement (Third) of Property: Donative

Transfers § 11.3 and cmt. b (Tentative Draft No. 1, approved 1995).

Rules of construction attribute intention to individual donors based on assumptions of common intention. Rules of construction are found both in enacted statutes and in judicial decisions. Rules of construction can involve the meaning to be given to particular language in the document, such as the meaning to be given to "heirs" or "issue." Rules of construction also address situations the donor failed to anticipate. These include the failure to anticipate the predecease of a beneficiary or to specify the source from which expenses are to be paid. Rules of construction can also concern assumptions as to how a donor would have revised donative documents in light of certain events

occurring after execution. These include rules dealing with the effect of a divorce and whether a specific devisee will receive a substitute gift if the subject matter of the devise is disposed of during the testator's lifetime.

Instead of enacting this section, a jurisdiction enacting this Code may wish to enact detailed rules on the construction of trusts, either in addition to its rules on the construction of wills or as part of one comprehensive statute applicable to both wills and trusts. For this reason and to encourage this alternative, the section has been made optional. For possible models, see Uniform Probate Code, Article 2, Parts 7 and 8, which was added to the UPC in 1990, and California Probate Code §§ 21101-21630, enacted in 1994.

§ 36C-1-113. Construction of certain formula clauses applicable to estates of decedents dying in calendar year 2010.

(a) **Purpose.** — The federal estate tax and generation-skipping transfer tax expired January 1, 2010, for one year. To carry out the intent of decedents in the construction of wills and trusts and to promote judicial economy in the administration of trusts and estates, this section construes certain formula clauses that reference federal estate and generation-skipping transfer tax laws and that are used in trust instruments or amendments to trust instruments created by settlors who die in or before calendar year 2010.

(b) **Applicability.** — This section applies to the following:

- (1) To a trust instrument or an amendment to a trust instrument executed by a settlor before December 31, 2009, that contains a formula provision described in subsection (c) of this section if the settlor dies after December 31, 2009, and before the earlier of January 1, 2011, and the effective date of the reinstatement of the federal estate tax and generation-skipping transfer tax, unless the instrument or amendment clearly manifests an intent that a rule contrary to the rule of construction described in subsection (c) of this section applies.
- (2) To the terms of a trust instrument or an amendment to a trust instrument executed by a settlor who dies before December 31, 2009, providing for a disposition of property that contains a formula provision described in subsection (c) of this section and occurs as a result of the death of another individual who dies after December 31, 2009, and before the earlier of January 1, 2011, and the effective date of the reinstatement of the federal estate tax and generation-skipping transfer tax, unless the terms of the instrument or amendment clearly manifests an intent that a rule contrary to the rule of construction described in subsection (c) of this section applies.

(c) **Construction.** — A trust instrument or an amendment to a trust instrument subject to this section is considered to refer to the federal estate and generation-skipping transfer tax laws as they applied with respect to estates of decedents dying on December 31, 2009, if the trust instrument or the